

CHAPTER 1151

Telecommunications Antenna, Tower and Site Regulations

1151.01 INTENT; DEFINITIONS.

A. Intent

In recognition of the fact that the City of Harrison is a fully zoned and planned community, in a rural section of Hamilton county, it is the intent of this section to:

1. Strike a balance between the demand for cellular or wireless communications towers and sites while accommodating their location and number in the City;
2. Minimize adverse visual effects of communications towers and support structures through proper siting, design and screening;
3. Minimize any impact on adjacent properties, including but not limited to diminution in property values, aesthetics, and potential damage from communications towers and support structure failure; and
4. Require the joint use of any new and existing communications towers and support structures in order to reduce the number of such structures needed in the future.
5. Amateur and HAM radio operations for the non-commercial purposes are exempt.

B. Definitions

The following, definitions shall apply to this Section:

1. "Personal Wireless Services" means commercial mobile services, licensed or unlicensed wireless services and common carrier wireless exchange access services, including cellular services.
2. "Cellular Communications Services" means personal communications accessed by means of cellular equipment and services, including portable cellular or wireless two-way communications.
3. "Cellular or Wireless Communications Antenna" or "Antenna" shall mean any structure or device used to receive or transmit electromagnetic waves between cellular phones, pagers, commercial mobile services, wireless services and ground-wired communications systems including both directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional antennas such as whips and other equipment utilized to serve personal communication services.

4. "Cellular or Wireless Communications Support Structure" shall mean any building or structure accessory to but necessary for the proper functioning of the cellular or wireless communications antenna or tower, including accessory transmission and receiving equipment.
5. "Cellular or Wireless Communication Tower" or "Tower" shall mean any freestanding structure used to support a cellular or wireless communication antenna, including but not limited to self-supporting lattice, guyed, or monopole with an elevated cellular or wireless communications antenna.
6. "Cellular or Wireless Communications Site" or "Site" shall mean a tract, lot, or parcel of land containing a cellular or wireless communications tower, cellular or wireless communications antenna, and any support structures, facilities, or uses ancillary to cellular or wireless transmission activity.
7. "City" shall mean the City of Harrison, Ohio.
8. "Tall Structures" shall include, but not be limited to: smoke stacks, water towers, buildings over fifty (50) feet in height, antenna support structures or other cellular or wireless communication structures, other communication towers and roadway lighting poles.
9. "Person" shall mean any business entity, person, individual, or telecommunications company or operator.
10. "Applicant" shall mean the person applying for a permit to place or operate a cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site in the City of Harrison.
11. "Clear and Convincing Evidence" shall mean evidence which is certain and trustworthy to the extent that it causes the decision maker to have a firm belief or conviction as to the truthfulness of the facts sought to be established.

1151.02 PLACEMENT OF TELECOMMUNICATIONS ANTENNAS, TOWERS AND SITES.

- A. Cellular or wireless communication antennas, cellular or wireless communication towers, and cellular or wireless communication sites are permitted uses in the industrial zoning districts (M-1 and M-2).
- B. Cellular or wireless communication antennas, cellular or wireless communication towers, and cellular or wireless communication sites are conditionally permitted uses in the B-4 (General Business Districts).
- C. Cellular or wireless communication antennas, cellular or wireless communication towers, and cellular or wireless communication sites are

prohibited in all other zoning districts unless the applicant demonstrates that such regulations would otherwise prohibit or have the effect of prohibiting the provision of personal wireless services.

- D. Denials by the City to place, construct, or modify cellular or wireless communication antennas, cellular or wireless communication towers, and/or cellular or wireless communication sites shall be in writing and supported by substantial evidence contained in a written record.
(Ord. 64-09. Passed 10-6-09.)

1151.03 OTHER ZONING DISTRICT REGULATIONS UNAFFECTED EXCEPT TO THE EXTENT THEY ARE IN CONFLICT.

- A. To the extent the regulations of other zoning districts, as set forth in the Zoning Ordinance and shown in the Official District Map, Harrison, Ohio, do not conflict with the regulations of cellular or wireless communication antennae, cellular or wireless communication towers, or cellular or wireless communication sites, as provided herein, such regulations shall remain unaffected.
- B. To the extent the regulations of other zoning districts, as set forth in the Zoning Ordinance and shown in the Official District Map, Harrison, Ohio are in conflict with the regulation of cellular or wireless communication antennae, cellular or wireless towers, or cellular or wireless communication sites, as provided herein, such regulations shall be superceded by the regulations herein.

1151.04 PROHIBITION UNLESS IN COMPLIANCE WITH REGULATIONS.

A cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless site shall not be placed, operated, constructed, affixed or otherwise located within the City except as permitted by the Telecommunications Antenna, Tower, and Site Regulations set forth herein.

1151.05 USE REGULATIONS FOR CELLULAR OR WIRELESS COMMUNICATIONS ANTENNAE, TOWERS, OR SITES.

The following use regulations shall apply to cellular or wireless communication antenna, cellular or wireless communication towers, or cellular or wireless communication sites:

- A. Unless otherwise provided by these regulations, a cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site may only be placed, operated, constructed, affixed, or located in the City's Industrial (M-1 and M-2) and in the General Business (B-4) Zoning Districts.
- B. No cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site shall be placed in the City's M-1, M-2, and B-4 zoning districts unless the person or applicant requesting the placement of the antenna, tower, or site obtains a zoning permit from the City in accordance with the Zoning Ordinance.

- C. All other accessory uses to any cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site including, but not limited to business offices, maintenance or storage areas, and vehicle parking spaces, are permitted only to the extent they are in compliance with the applicable zoning district use regulations provided within the Zoning Ordinance.
- D. No cellular or wireless communication tower shall exceed one hundred ninety-nine (199) feet in total height. The height shall be measured from the base of the tower, at grade, to the highest point of the tower or site to include any attached equipment devices, or other apparatus. Grade shall be determined as the elevation of the existing ground level topography at the precise location of the base of the tower prior to construction of the tower.
- E. No cellular or wireless communication tower shall be closer than one hundred ten percent (110%) of its height to any M or B-4 zoning district boundary line. The one hundred ten percent (110%) distance shall be measured in a straight line from the nearest point of the base of the tower, or in the case of the use of guy wire(s), from the point where the guy wire(s) is secured, to the closest part of the M-1, M-2, or B-4 zoning district boundary line.

1151.06 APPLICATION FOR ZONING PERMIT AND PROCEDURE TO PLACE OR OPERATE AN ANTENNA, TOWER OR SITE.

Notwithstanding any otherwise applicable provision of the Zoning Ordinance, the following permit application process shall be the exclusive process for any person seeking the placement or operation of a cellular or wireless communication antenna, tower, or site within the City. No zoning permit shall be issued allowing for the placement or operation of a cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site within the City unless the following permit application process is followed:

Notwithstanding any otherwise applicable provision of the Zoning Ordinance, any person applying for the placement or operation of a cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site within any M-1, M-2, or B-4 district must first arrange a conference with the Director of Zoning to provide information regarding the proposed placement or operation within the City. The information shall include a preliminary plan, which provides a rendering of any proposed tower or site to scale and in relation to the surrounding area.

- A. No later than five (5) business days after the conference with the Director of Zoning, as set forth in Section 1151.06, the applicant shall provide written notice, by certified mail, of the applicant's intent to place or operate a cellular or wireless communication antenna, cellular or wireless communication tower, or cellular or wireless communication site to all owners of property whose land is contiguous to and/or directly across the street from the property on which the applicant intends to place or operate the antenna, tower, or site. If the notice is unclaimed or refused, the applicant shall mail the notice by regular mail. All such property owners and their mail addresses shall be provided to the City. The notice shall include:

1. A brief description of the proposed plan to place and operate the proposed antenna, tower, or site, to include a legal description of all affected property, the address of all affected property, and the identification of all streets which are proximate to or in the immediate vicinity of the site, sufficient to identify the particular location and boundaries upon which the antenna, tower, or site is to be placed or operated;
2. A site-rendering or illustration of the proposed antenna, tower, or site as it would appear upon completion; and
3. A brief statement outlining the necessity, purpose, or intended use of the proposed antenna, tower, or site.

At the next regular Planning Commission meeting following the conference set forth in Section 1151.06, the Director of Zoning shall give notice of the application to the Planning Commission and shall submit preliminary plan(s) to the Commission. Upon receiving notice of the conference and plan(s), the Planning Commission shall conduct a public hearing within a reasonable time for the purpose of making a determination as to whether the proposed plan(s) satisfies the Standards of Approval set forth in Section 1151.07. The hearing shall provide:

1. A full opportunity for the applicant to make a presentation to the Planning Commission regarding the proposed cellular or wireless communication tower, or cellular or wireless communication site, including the plan(s) and any issues pertaining to the Standards for Approval set forth in Section 1151.07.
2. A full opportunity for the Planning Commission to submit questions to the applicant regarding the proposed cellular or wireless communication tower, or cellular or wireless communication site, including the plan(s) and any issues pertaining to the Standards for Approval set forth in Section 1151.07.
3. A full opportunity for any interested property owners or other affected persons to address the Planning Commission regarding the proposed cellular or wireless communication tower, or cellular or wireless communication site, including the plan(s) and any issues pertaining to the Standards for Approval set forth in Section 1151.07.
4. A full opportunity for the Planning Commission to seek input from the City Administration or other retained consultants or experts regarding the proposed cellular or wireless communication tower, or cellular or wireless communication site, including the plan(s) and any issues pertaining to the Standards for Approval set forth in Section 1151.07.

5. A full opportunity for the Planning Commission to deliberate, debate, and vote on whether to grant or deny a permit to the applicant or to defer action to obtain additional information.
- B. All Planning Commission hearings conducted pursuant to this section shall provide for the applicant, affected property owners, other interested parties, or their representative a full opportunity to appear in person to:
 1. Present positions, arguments, and contentions;
 2. Offer witnesses to present any supporting evidence; and
 3. Offer evidence to refute evidence and testimony offered in opposition to a position, argument, or contention.
 - C. Upon retiring for deliberations, the Planning Commission shall conduct such deliberations in a quasi-judicial capacity, and not as a legislative body. Such deliberations shall be conducted in public.
 - D. Upon making a determination as to whether to issue or deny a zoning permit pursuant to this section, the Planning Commission shall place into the record its supporting findings of facts and conclusions of law.
 - E. A zoning permit shall be issued only upon an affirmative vote of three (3) members of the Planning Commission in favor of such issuance. In event the Planning Commission determines that a zoning permit shall be issued, it shall incorporate into the zoning permit any conditions or limitations as it may deem necessary based upon the Standards for Approval set forth in Section 1151.07.
 - F. In addition to the required public notice for any Planning Commission hearing held pursuant to this section, the City shall provide written notice by regular mail of the initial hearing to all affected owners of the property, as identified by the applicant to the City, as provided by Section 1151.06A.

1151.07 STANDARDS FOR APPROVAL.

- A. In cases of cellular or wireless communication antennas, cellular or wireless communication towers, or cellular or wireless communication sites, the applicant shall demonstrate within generally accepted telecommunications industry standards that there are no other reasonably suitable locations within the geographic area to be served except for the placement of the antenna, tower, or site in an M-1, M-2, or B-4 district, to include the following:
 1. That the sole feasible method of providing the proposed telecommunications services is through the utilization of the proposed tower, site, or antennas; and

2. As opposed to other currently available or feasible telecommunications technologies, an antenna, tower, or site must be physically placed or operated at the proposed location.
- B. The applicant shall demonstrate, utilizing the most recent technological evidence, that an antenna, tower, or site must be physically placed or operated at the proposed location as a necessary component of a cellular or wireless communications grid system.
 - C. The applicant shall demonstrate, utilizing the most recent technological evidence, the non feasibility of placing an antenna or tower on existing structures, including the placement of an antenna on any existing or permitted towers or sites. In cases where the applicant does not propose to place an antenna or tower on an existing tower or site, the applicant must demonstrate by clear and convincing evidence that the antenna or tower cannot be located on any other tower, site, building, or structure in the geographic area to be served, and that all reasonable means have been undertaken to avoid any undue impact caused by the “clustering” of towers or sites within an area, including any M-1, M-2, or B-4 districts.
The applicant must send a certified mail announcement to all other existing tower or site operators in the geographic area to be served stating the applicant’s siting needs and/or sharing capabilities. In determining whether the applicant has met the requirements of this section, the Planning Commission’s determination shall consider those factors set forth in subsections (B) and (C) of Section 1151.07.
 - D. The applicant shall demonstrate that public safety communications; including police, fire, and emergency response services communications, will not be negatively affected or otherwise impaired by the operation of the proposed antenna, tower, or site.
 - E. The applicant shall demonstrate that the physical design of the proposed cellular or wireless communications tower and its antenna are safe and that the surrounding properties will not be negatively affected by tower structure failure, falling ice or other debris.
 - F. The applicant shall demonstrate that the cellular or wireless communications tower is fitted with manufacturer approved anti-climbing devices.
 - G. An enclosed fence shall be required around the cellular or wireless communications tower and any supporting structures, unless the antenna is mounted on an existing structure. The fence shall be a minimum of eight (8) feet in height and shall be erected to prevent access to non authorized personnel. The fence shall be constructed out of chain link.
 - H. Landscaping shall be required to screen as much of the support structures as possible, as well as the fencing surrounding the cellular or wireless communications tower or site, to soften the appearance of the cellular or wireless communications site. A tower or site landscaping proposal shall include trees, shrubs and other landscaping vegetation.

Existing vegetation, topography, walls, decorative fences or other features may be incorporated into the landscaping plan.

- I. If the antenna is mounted on an existing structure, and other equipment is housed inside of an existing structure, landscaping shall not be required.
- J. The proposed cellular or wireless communications tower shall be designed and constructed to accommodate anticipated advances in telecommunications technology and any anticipated future uses.
- K. The applicant shall demonstrate that the tower has been maximized in design, engineering, and construction to reasonably accommodate other cellular or wireless communication operators or companies, including collocation capabilities. The purpose of this subsection is to minimize the number of towers in the City, while maximizing the number of uses and capabilities for any permitted towers and to provide for advances in public emergency response.
- L. The applicant shall demonstrate that it is currently licensed by the Federal Communications Commission (FCC) to operate as a telecommunications service provider.
- M. The applicant shall demonstrate that the tower will be painted in a color scheme which minimizes visual impact while also meeting any applicable Federal Aviation Administration (FAA) regulations. No cellular or wireless communications towers may be artificially lighted except when required by the FAA.
- N. No cellular or wireless communications antenna, tower, or site shall contain any signage or advertisement containing a commercial or public message, solicitation, or other communication.
- O. The applicant shall possess liability insurance of at least one million dollars (\$1 million) in coverage and shall show evidence of such to the City of Harrison.
- P. The applicant shall provide a plan for all proposed cellular or wireless communications towers and sites, at a scale of 1 inch = 20 feet (1"=20'), indicating as a minimum, the following:
 - 1. The total area of the site or tower.
 - 2. The existing zoning of the property in question and of all adjacent properties.
 - 3. All public and private right-of-way and easement lines located on or adjacent to the property which is proposed to be continued, created, relocated or abandoned.
 - 4. Existing topography with a maximum of five (5) foot contour intervals.

5. The finished grade of the development shown by contours not exceeding five (5) foot intervals.
6. The location of all existing buildings and structures and the proposed location of the cellular or wireless communications tower and all cellular or wireless communications support structures including dimensions, heights, and where applicable, the gross floor area of the buildings.
7. The locations and dimensions of all curb cuts, driving lanes, off-street parking and loading areas including the number of spaces, grades, surfacing materials, drainage plans and illumination of the facility.
8. All existing and proposed sidewalks and open areas on the site.
9. The location of all proposed fences, screening and walls.
10. The location of all existing and proposed streets.
11. All existing and proposed utilities including types and grades.
12. The schedule of any phasing of the plan.
13. A written statement by the applicant as to the visual and aesthetic impact of the proposed cellular communications tower on adjacent properties.
14. Any other information as may be required by the Planning Commission to determine conformance with the Harrison Zoning code.
15. The type and number of proposed shrubbery, trees, plants, or ground cover with the particular location of each proposed shrubbery, tree, plant, or ground cover, the estimated dimensions including height and width of any shrubbery, trees, plants, or ground cover at the time of planting; the estimated dimensions, including height and width of any shrubbery, trees, plants, or ground cover at the time of their maturity, and the estimated number of years until full maturity for each type of proposed shrubbery, tree, plant, or ground cover.

- Q. The applicant shall demonstrate proof of full compliance with the notice requirements set forth in subsection (A) of Section 1151.06.

1151.08 MAINTENANCE.

Any owner of property containing a tower or site and any operator or owner of the tower or site shall maintain such property, structures, and site in good condition and free from trash, outdoor storage, weeds, and other debris. Any cellular or wireless communications tower or site that has discontinued its service for a period of six (6)

continuous months or more shall be removed along with all accessory structures related thereto. "Discontinued" shall mean that the structure has not been properly maintained, has been abandoned, is obsolete, or is unused for the purpose of its original construction.

1151.09 NOTICE OF CHANGE IN OWNERSHIP, DISCONTINUANCE OF OPERATIONS, AND ANNUAL MEETING WITH DIRECTOR OF ZONING.

- A. In the event that there is a change on the ownership of a tower or site, written notice shall be immediately given to the Planning Commission. Such notice shall list the address, principal place of business, full name of person who shall act as the point of contact with the City with regard to the tower or site, and that person's business telephone number.
- B. In the event that a tower or site will no longer be operated or its use discontinued or abandoned, the person operating the tower or site or the owner of property containing the tower or site shall:
 - 1. Immediately give written notice to the Planning Commission upon making such determination or obtaining such knowledge; and,
 - 2. Immediately dismantle and remove the tower or site and;
 - 3. Reclaim the affected portions of the property such that it is placed back into a condition aesthetically similar to the property's original and natural condition prior to the placement of the tower or site; or
 - 4. The Director of Zoning, at his discretion, may conduct an annual status conference with a representative of the owner or operator of an antenna, tower, or site. The agenda of the meeting may include but is not limited to any issues regarding the ownership, operation, maintenance, and complaints regarding the antenna, tower, or site.

1151.10 CONTINUING USE OF CELLULAR OR WIRELESS COMMUNICATIONS SITE ABANDONMENT.

- A. The cellular or wireless communications company or operator shall file and maintain accurate and current records of any antennas, towers, sites within the City with the Director of Zoning. The records shall indicate any additions, deletions, or other changes in its use.
- B. In the event that the City has determined that any tower or site has been discontinued, has been abandoned, or constitutes a safety or health violation, the City shall proceed in accordance with Ohio R.C. 715.26 and 715.261, or pursue any other remedies allowed under law.

1151.11 COLOCATION.

- A. No person owning or operating a tower or site which has previously been permitted by the City to place the tower or site in the City shall unreasonably deny accommodating or collocating the placement of a third party antenna on the tower or at the site.

- B. In cases where an applicant requests placement of an antenna on an existing tower or site, and the owner or operator of the existing tower or site opposes any such placement, as part of the Planning Commission hearing proceedings for such application held pursuant to this section, both the applicant and person owning or operating the existing tower or site shall be required to demonstrate within a reasonable certainty, based upon technological or generally accepted telecommunications industry standards, the feasibility or non-feasibility of placing the third party antenna on the tower or site. Such feasibility considerations shall include whether a tower antenna can or cannot be located on another communication tower, building, or structure. The Planning Commission shall consider the space available on the existing structure, the technological practicality of the co-location, the financial feasibility of the co-location, and such other factors as the Planning Commission deems appropriate.
- C. The Planning Commission shall take into consideration any such evidence as may be provided pursuant to subsection (B) of this section, testimony, or other provided plans/s or information in making its permit determination under this section.
- D. Nothing in this section shall infringe upon the right of the person operating the tower or site to require reasonable compensation from the applicant for the placement of the third party antenna on the existing tower or site.
- E. Notwithstanding any provision of this section, any person seeking to collocate or place an antenna on an existing tower, site, or other structure shall be required to seek a zoning permit as set forth in Section 1151.06

Application Fee

The application fee for requesting the placement of an antenna, tower, or site shall be two hundred fifty (250) dollars per application plus actual costs incurred by the City for conducting any Planning Commission hearings plus any expenses incurred pursuant to the City's Comprehensive Review process. The two hundred fifty (250) non-refundable dollars shall be submitted in full at the time of application, and in cases of applications for antennas, towers, or sites, an additional two hundred fifty (250) dollars refundable deposit shall be made for the anticipated costs of conducting Planning Commission hearings.